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August 3, 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, D.C. 20554

**Re:   *Ex Parte Presentation*  
      CMRS Spectrum Cap Biennial Review  
      WT Docket No. 01-14**

Dear Ms. Salas:

This letter serves as notification that on August 2, 2001, Luisa Lancetti and Roger Sherman (representing Sprint PCS) met with Lauren Kravetz Patrich, John Branscome, Jeffrey Steinberg, Mel Spann, Susan Singer, Heidi Kroll and Wayne Leighton (of the Wireless Telecommunications Bureau) to discuss issues related to the above-captioned proceeding. A copy of the presentation material discussed at the meeting is attached hereto.

Pursuant to Section 1.1206(a), an original and one copy of this letter are being filed with your office. Please associate this letter with the file in the above-captioned proceeding.

Please contact us should you have any questions concerning the foregoing.

Sincerely,

Roger C. Sherman

cc:   Lauren Kravetz Patrich  
      John Branscome  
      Jeffrey Steinberg  
      Mel Spann  
      Susan Singer  
      Heidi Kroll  
      Wayne Leighton

**CMRS SPECTRUM CAP BIENNIAL REVIEW**  
**WT DOCKET No. 01-14**

**Sprint PCS' Plan for Sunset of Spectrum Cap**  
***Ex Parte* Presentation**

August 2, 2001

## Overview

- ◆ Spectrum cap has been successful in achieving its objective: ensuring CMRS market is competitive. As confirmed by recent *Sixth Annual CMRS Report*, mobile market is more competitive than any other telecommunications sector.
- ◆ Premature removal of the cap (pre “3G” auction) would result in reduced competition as existing licensees merge.
- ◆ Sprint PCS sunset plan:
  - Immediately adopt 10 MHz AMPS credit for cellular carriers providing AMPS service and forbear from Section 310(d) review of mergers not implicating cap;
  - Clarify that in interim, FCC will entertain cap waiver requests as part of Section 310(d) review process.
  - Increase cap levels in 3G allocation proceeding (ensuring competitive 3G auction);
  - Sunset cap concurrent with issuance of 3G licenses; and

## History of the CMRS Spectrum Cap

- ◆ 1994: FCC adopts 45 MHz cap as “minimally intrusive means” to achieve certain Section 309 statutory directives, including:
  - “Promot[e] economic opportunity and competition;”
  - “Avoid excessive concentration of licenses;” and
  - Ensure “efficient and intensive use of the electromagnetic spectrum.”
- ◆ With 180 MHz of spectrum allocated to CMRS, cap guarantees there will be at least four providers in each area.
- ◆ 1999: Appellate court confirms that cap is reasonable method of ensuring competition, noting that a “cap, unlike many other regulations, might actually require a bright-line rule to be effective.” (BellSouth Corp v. FCC, 162 F.3d 1215 (D.C. Cir. 1999))
- ◆ 1999 and 2000: First Biennial Review: FCC increases cap in rural areas to 55 MHz, but determines that cap “continues to be necessary to ensure long-term competition within the CMRS sector”:

“Competition, while growing steadily, is still developing as licensees enter these markets. Ultimately, we do not want to place in jeopardy the substantial benefits of greater competition in the CMRS markets just as they are beginning to be realized. . . . [W]e find that these risks [of consolidation] pose a significant threat to our goals of promoting and protecting competition in CMRS markets.”

## The Cap Is Achieving Its Objectives

- ◆ There are six vibrant national carriers. According to *Sixth Annual CMRS Report* Competition is intense and has resulted in:
  - Lower prices (over 12% reduction in 2000)
  - Increased usage (monthly MOUs jumped 38% in 2000)
  - New services (e.g., wireless web; voice dialing)
  - Increased penetration (total subscribers jumped 28% in 2000)
- ◆ The cap has encouraged development of more spectrally efficient technologies (e.g., 1XRTT doubles voice capacity and increases data rates tenfold).
- ◆ Carriers have met growth/expansion needs through spectrum swaps (e.g., Sprint PCS/AT&T Wireless; Cingular/VoiceStream).
- ◆ The market today would not be as competitive if the Commission had concurred with cellular industry argument that the imposition of a spectrum cap would harm consumers and distort the marketplace unfavorably. HHI average in top 25 markets has gone from 5000 in January 1996 to 3505 in January 1999 to 2611 in January 2001. (HHI of over 1800 suggests “highly concentrated market.”)

## Sprint PCS' Sunset Plan

1. Provide immediately 10 MHz AMPS credit to every cellular carrier willing to continue providing AMPS.
  - 1G analog is spectrally inefficient compared to 2G/3G digital;
  - Record in AMPS Biennial Review (Docket 01-108) confirms critical role that AMPS continues to play (e.g., TTY/hard of hearing, telematics, ubiquitous roaming, 911 access);
  - There is widespread recognition that a five-year phase-out of AMPS is necessary;
  - AMPS credit ensures that cellular carriers are not disadvantaged during the AMPS phase out.
2. Forbear from Section 310(d) review of mergers not implicating the cap.
  - Most mergers not implicating cap pose no threat to competition;
  - DOJ and/or FTC would still review such mergers.

3. Clarify that FCC will entertain cap waiver requests concurrently with Section 310(d) review process.
  - Addresses legitimate complaint that current, two-step process (cap waiver followed by 310(d) review) is too lengthy. . . . (and requires carriers to announce sensitive plans prematurely).
4. Increase cap levels in 3G allocation proceeding.
  - Increasing cap will allow carriers to obtain additional spectrum without jeopardizing competition;
  - Cap during 3G auction will help ensure 3G licenses are awarded promptly (by minimizing risk of post-auction monopoly complaints); and that competitive entry is facilitated;
  - New cap levels cannot be established w/o first knowing total amount of 3G spectrum available.
5. Sunset cap concurrent with issuance of 3G licenses.
  - Maintaining new cap level through 3G auction will ensure that no one (or two) entities purchase all new 3G spectrum and dominate market;
  - Structure of CMRS market will be relatively fixed once 3G licenses are awarded;
  - Post-auction consolidation proposals can be handled *via* case-by-case reviews — whether FCC under Section 310(d), DOJ/FTC under antitrust laws, or both.

## Arguments for Immediate Repeal Lack Merit

- ◆ Carriers are capacity constrained.
  - No supporting evidence in record;
  - AT&T Wireless stated recently that it has adequate spectrum to rollout initial 3G network in “virtually all of the top 100 markets”;
  - Many 3G technologies are more spectrally efficient than 2G technologies;
  - In any event, capacity issues should be addressed by allocating additional spectrum (and revising the cap); permitting two capacity constrained competitors to merge does not solve a capacity problem.
- ◆ Cap harms U.S. industry’s international competitiveness.
  - EU has allocated more CMRS spectrum than U.S.;
  - However, U.S. market is more competitive than EU market, and Americans pay less for service than EU counterparts;
  - EU is attempting to emulate U.S. model by introducing additional competitors.



◆ CMRS market is like any other market.

- This view is not accurate as there are absolute barriers to new entry (because FCC holds “entry keys” through spectrum allocation decisions);
- No guarantee competitors will acquire newly available spectrum;
- Impact of new entry takes years to materialize (because of time needed for network buildout);

◆ FCC role unnecessary given DOJ/FTC review.

- Sprint PCS agrees agencies should avoid duplication, which is why it supports forbearance from Section 310(d) review of mergers not implicating the cap;
- DOJ and FCC have different responsibilities. DOJ’s charge is to stop proposed mergers/acquisition that would “substantially lessen competition;”
- In contrast, FCC’s statutory directive is to “promote . . . competition,” “avoid excessive concentration of licenses,” foster the “rapid deployment of new technologies and services for the benefit of the public,” and facilitate “efficient and intensive use of the electromagnetic spectrum.”